IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 30TH JANUARY 2007 / 10TH MAGHA 1928

WP(C).No. 1710 of 2007(C)

AGAINST THE ORDER DATED / / IN EP 544/1999 IN OS.2028/1997 of III ADDL.M.C.,TRIVANDRUM
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PETITIONER:

PARAMU, AGED 64, S/O.BHAGAVATHY,
PARAPPOTTA HOUSE, PERUKAVU,
THIRUVANANTHAPURAM.

BY ADV. SRI.B.RAJEEV KOYICKAL

RESPONDENTS:
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1. MICHAEL PAKKIYAM,
KUZHAVOOR KONATH HOUSE, VILAVOORKAL VILLAGE,
THIRUVANANTHAPURAM.

2. PAKKIYAM JOHNSON, DO. DO.

3. PAKKIYAM GEORGE, DO. DO.

4. PAKKIYAM VARGHESE, DO. DO.

5. LOYIS SUSHEELA, DO. DO.

6. PAKKIYAM ROBINSON, DO. DO.

7. PAKKIYAM STEPHENSON, DO. DO.

8. LOYIS ROSELET, DO. DO.

9. PAKKIYAM FRANCIS, DO. DO.

10. LOUIS VALSALA, DO. DO.

11. PAKKIYAM STSANELY, DO. DO.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 1710 OF 2007

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Dated this the 30th day of January, 2007.

J U D G M E N T

This writ petition is preferred to set aside Exts.P1 and P2. The writ petitioner is the judgment debtor in O.S.2028/87. The 3rd Addl. Munsiff, Trivandrum by his judgment dated 9th October, 1997 granted a decree in favour of the plaintiff. The defendants though filed a written statement did not appear before Court and they were set exparte. Thereafter, an execution petition was filed by the decree holder as E.P. 544/99 and an E.A. is filed as 1068/06. The learned Munsiff granted delivery of the property with police aid. The present writ petitioner wants to challenge that order and therefore has filed this writ petition for quashing Exts.P1 and P2.

2. When the case is declared exparte the proper remedy for the party is to take up the matter before the appropriate forum. This Court would have shown some indulgence if the judgment debtor has come to this Court within a reasonable time. The decree was passed in 1997 and the writ petition is filed in the

year 2007, exactly one decade after the passing of the decree. It is submitted by the learned counsel for the petitioner that he had filed an application for setting aside the exparte decree but it is for him to pursue that application and get an appropriate remedy and this Court cannot grant an order of stay to defeat the decree that has been obtained. Therefore, the writ petition lacks merit and it is dismissed.

However, it is made clear that the writ petitioner is entitled to pursue his remedy for setting aside the exparte decree and if so advised can move the appropriate Court for obtaining the stay regarding the delivery of the property.

M.N. KRISHNAN, JUDGE.

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